

**STATEMENT OF POSITION OF THE U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

**IN SUPPORT OF INTENDED FINAL DECISION ON THE  
MODIFICATION TO THE REISSUED RCRA PERMIT AND  
SELECTION OF CERCLA RESPONSE ACTION**

**REST OF RIVER REMEDY, GE-PITTSFIELD/HOUSATONIC  
RIVER SITE**

**February 29, 2016**

authorized by the text of the Decree, CERCLA’s regulations, RCRA guidance, and overall EPA policy.

**iii. Opposition to a new local PCB landfill has been persistent and vigorous.**

GE stands alone in its advocacy of on-site disposal. Local communities and governments strongly oppose on-site disposal of PCB-contaminated material in Berkshire County. EPA has encountered this opposition from numerous Berkshire County residents, community groups, municipalities along the Housatonic, and from Massachusetts government agencies. Many residents worry about the risks posed by a PCB landfill in Berkshire County, and public opposition only intensified after GE’s disposal of PCBs at the “Hill 78” landfill near a Pittsfield elementary school. Community groups have historically taken legal action to contest EPA’s choices related to the cleanup. Citizens nominated, and the Commonwealth designated, the Upper Housatonic as a protected area, which activated a state prohibition on permanent landfills. EPA has encountered similar levels of resistance in other site cleanups across the country; such intense public and governmental opposition to on-site disposal threatens to delay and/or altogether block completion of the Rest of River Remedial Action. Berkshire County residents have expressed their objections to siting a new PCB landfill in their community in hundreds of public comments, protests at public meetings, and letters to newspaper editors over the last decade. For example, residents submitted comments to EPA identifying this widespread sentiment, saying that creating a landfill in Berkshire County “is unacceptable to the people of this county,”<sup>179</sup> And “will not be tolerated by its populace.”<sup>180</sup>

A common theme among commenters has been a concern about the ongoing negative environmental effect of a dump or landfill in Berkshire County, which has already endured decades of impacts from GE’s contamination. The Planning Board for the town of Great Barrington wrote that it “believes that there is tremendous potential for serious and long-lasting environmental and economic damage to the Town of Great Barrington if this [PCB landfill] is forced on the Town.”<sup>181</sup> Tim Gray, Executive Director of the Housatonic River Initiative, wrote, “Toxic hazardous waste dumps will be dangerous to residents, [affect] property values, and be terrible for our tourism industry.”<sup>182</sup> Ann Gallo asked pointedly, “GE continues to be unaware of, or are deliberately overlooking the impact of their thoughtless, offensive choices. [...] Why, yet again, do they leave behind their waste on a struggling county?”<sup>183</sup>

In some cases, public comments were informed by the Hill 78 controversy. As part of the non-Rest of River cleanup, the Decree allowed GE to use a pre-existing landfill located on the former GE facility to dispose of soil and sediment excavated in remediating the Site. This historic landfill, called “Hill 78,” was across the street from Allendale Elementary School. Residents turned out in force to voice their concerns about placement of additional material at Hill 78. Nearly 85 residents attended a public meeting at the Allendale School<sup>184</sup> Community

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<sup>179</sup> Comment from Jeffrey Leppo, M.D. to US EPA (Apr. 10, 2008), SDMS 289634.

<sup>180</sup> Comment from John Messerschmitt to US EPA (Apr. 9, 2008), SDMS 289634.

<sup>181</sup> Comment from Town of Great Barrington Planning Board to US EPA (Jan. 29, 2011), SDMS 477441.

<sup>182</sup> Comment from Tim Gray to US EPA (Jan. 30, 2011). SDMS 477441.

<sup>183</sup> Comment from Ann Gallo to US EPA (Dec. 4, 2010), SDMS 477441.

<sup>184</sup> Jack Dew, *PCB Dump Looms Over Allendale Elementary School*, Berkshire Eagle, Oct. 23, 2005. Dew describes the scene at this meeting: “Dozens raised their hands and several shouted questions, asking ‘Would you let your children play here?’ ‘Would you live next to the dump?’”

groups arranged independent testing of the school’s air filters.<sup>185</sup> All 11 Pittsfield pediatricians signed a letter to the Pittsfield mayor noting concern over airborne PCBs reaching Allendale students from Hill 78 disposal activities and stating, “We urge the community to aggressively pursue options that will further reduce or eliminate the risk to our children.”<sup>186</sup>

The “Hill 78” controversy galvanized citizens to oppose any future PCB landfills in the region. For instance, William and Christine Coan, Pittsfield residents, “strongly urge[d]” EPA to oppose an upland disposal facility in Berkshire County: “In light of the community uproar generated by the disposal dump located behind Allendale School in Pittsfield, we would suggest that the project would be delayed for years as communities utilized all political and legal means available to keep such a dump out of Berkshire County.”<sup>187</sup> Similarly, Peter Lafayette wrote that he has “fierce opposition to GE’s proposal to create another toxic landfill in Pittsfield or Berkshire County. The recently created Hill 78 contains PCB waste and has become a battleground for residents. To suggest that another PCB landfill is to be considered for Pittsfield or Berkshire County is outrageous.”<sup>188</sup>

Massachusetts has also declared vigorous disapproval of a new local landfill in public comments and meetings with EPA officials. From 2007 through 2014, EPA received comments from seven offices within the Commonwealth of Massachusetts, including the Departments of Fish and Game, Environmental Protection, Conservation and Recreation, and Public Health, advocating against disposal within Massachusetts. For example, the Commissioners of three Commonwealth offices wrote that “[t]he Commonwealth vigorously opposes two disposal options outlined in the revised CMS that call for disposal of removed material to be sited within Berkshire County” because:

Installation of a disposal facility in Berkshire County would also have extremely negative impacts to the communities surrounding the facility including economic aesthetic, recreational, and potential health impacts should the facility fail. Further, construction of yet another such facility just expands the number of locations that would be affected by PCB-contamination, requiring additional long-term monitoring, operation and management beyond what is already a long-term burden on the community, and which runs counter to the concept of the anti-degradation provisions incorporated into the Massachusetts site cleanup regulations.<sup>189</sup>

In addition, every Berkshire city or town along the Housatonic (Pittsfield, Lee, Lenox, Stockbridge, Great Barrington, Sheffield, and Tyringham) submitted at least one comment against any additional landfills. For instance, the chair of the Lenox Board of Selectmen wrote: “We find it unacceptable that there could be a new, permanent hazardous waste landfill constructed in our community. We wish to state in very clear terms that such a facility will be vigorously opposed.”<sup>190</sup> In 2008, Pittsfield’s city council unanimously passed a resolution

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<sup>185</sup> Jack Dew, *Allendale Parents Upset at Agencies over PCBs*, Berkshire Eagle, Jan. 22, 2006.

<sup>186</sup> Letter from Siobhan McNally, M.D. *et. al.* to Mayor James Ruberto (May 1, 2006).

<sup>187</sup> Comment from William and Christine Coan to US EPA, (Apr. 3, 2008).

<sup>188</sup> Comment from Peter Lafayette to US EPA, (Apr. 8, 2008).

<sup>189</sup> Letter from Richard Sullivan, Secretary of the Massachusetts Executive Office of Environmental Affairs, et al, to US EPA (Jan. 31, 2011).

<sup>190</sup> Letter from Stephen Pavlosky, Chair Lenox Board of Selectmen, to US EPA (May 15, 2008).

stating its opposition to any upland disposal facility for dredged sediments in the city of Pittsfield or Berkshire County.<sup>191</sup>

In addition to voicing disapproval, the Commonwealth and public have taken action to protect the unique ecosystem of the Upper Housatonic. For example, 43 community members, including several members of the Massachusetts legislature, nominated the Upper Housatonic for designation as an ACEC, in 2008.<sup>192</sup> Nearly 1000 area residents signed petitions supporting this nomination.<sup>193</sup> In response, the Secretary of the Executive Office of Energy and Environmental Affairs designated the Upper Housatonic River as an ACEC in March 2009.<sup>194</sup> This designation automatically activated State-wide environmental protections provided for ACECs to the 13-mile corridor of riverbed, riverbank, floodplain and riverfront land running from Pittsfield to Lee, including the prohibition of siting permanent Solid Waste facilities within or adjacent to ACECs.<sup>195</sup> The Commonwealth later amended its statewide Hazardous Waste Facility Location Standards to prohibit permanent hazardous waste facilities in or adjacent to any ACEC in the Commonwealth.<sup>196</sup>

Several community advocacy groups and the Schaghticoke Nation have sought to shape the Housatonic River remedy, and have opposed on-site disposal. A Citizens Coordinating Council has been meeting since 1998, with participation from groups including Mass Audubon, Berkshire Natural Resources Council, and the Schaghticoke Nation. A community group called the Housatonic River Initiative has sponsored “No More Dumps” conferences and meetings for more than five years. Several of the groups have used legal action to oppose EPA’s work at the Site. When EPA moved to enter the Decree in 2000, Housatonic River Initiative, Housatonic Environmental Action League, and the Schaghticoke Nation, among other entities, moved to intervene to overturn the Decree, in part because they opposed the Hill 78 landfill.<sup>197</sup>

EPA’s experience at other sites lends credence to its fear that opposition to on-site disposal at the Housatonic will bar completion or timely completion of the remedy. In Bloomington, Indiana, a 1985 consent decree called for the construction of an incinerator to treat the PCB wastes from six area Superfund sites, all contaminated by Westinghouse industrial activities.<sup>198</sup> The public opposed the consent decree but it was entered despite this

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<sup>191</sup> *Politicians Vow to Fight Second PCB Dump*, Pittsfield Gazette, Apr. 10, 2008.

<sup>192</sup> Commonwealth of Massachusetts, Designation of the Upper Housatonic River Area of Critical Environmental Concern, March 30, 2009 (“March 2009 ACEC Designation”).

<sup>193</sup> March 2009 ACEC Designation.

<sup>194</sup> March 2009 ACEC Designation.

<sup>195</sup> *Id.*

<sup>196</sup> 310 CMR 30.708; also see Proposed Action on Regulations, July 19, 2013; and Regulations Filed with the Secretary of State, Dec. 20, 2013, Massachusetts Register Number 1250. In addition to the normal public hearings on changes to MADEP Regulations at MADEP regional offices, two additional public hearings were arranged for Lenox and Pittsfield. This regulation applies specifically to facilities that manage wastes containing PCBs at concentrations at or above 50 ppm. A potential waiver of these regulations is discussed *infra* at Section C.

<sup>197</sup> Memorandum by Housatonic River Initiative in support of Motion to Intervene, Dkt. No. 20, Feb. 29, 2000; Memorandum by Housatonic Environmental Action League and Schaghticoke Nation in support of Motion to Intervene, Dkt. No. 77, May 19, 2000. Housatonic River Initiative eventually withdrew its Motion to Intervene after it reached a settlement with the US.

<sup>198</sup> *United States v. Westinghouse Electric Corp. et al*, Civ. Action No. IP83-9-C and IP 81-488-C (S.D. Ind. 1985).

opposition in 1985. At that point, the public successfully lobbied the Indiana legislature to pass laws that delayed construction of the incinerator, in part by forbidding local disposal of the incinerator ash. In 1994 the parties to the decree began to explore alternative remedies. Consent decree amendments memorializing agreements for alternative remedies were entered in 1997, 1998, 1999, and 2008. In the end, cleanup was delayed for over a decade.

Similarly, in New Bedford, Massachusetts, a 1990 Record of Decision selected dredging, on-site incineration, and on-site disposal of incinerator ash for the PCB hotspot in New Bedford Harbor.<sup>199</sup> In response to strong local opposition including a letter-writing campaign and other community activism, in 1993 New Bedford passed a city ordinance banning transportation of the incinerator within city limits in an attempt to prevent the cleanup. Congressional involvement from Representative Barney Frank, Senator John Kerry, and Senator Ted Kennedy, as well as the Massachusetts Department of Environmental Protection convinced then EPA administrator Carol Browner to direct EPA Region 1 to plan a new remedy with community support.<sup>200</sup> The new remedy, selected in a 1999 ROD amendment, included dredging and off-site disposal of hot spot sediments without incineration.<sup>201</sup> In the end, cleanup of this most contaminated area of New Bedford harbor was delayed for nine years.

Having learned from these experiences, EPA takes community opposition seriously in its remedy selection process. In part due to strong public opposition, EPA has chosen off-site disposal at some of the nation's largest PCB-contaminated sediment sites, such as the Hudson River site. There, more than 2.7 million cubic yards of contaminated sediment have already been disposed off-site.<sup>202</sup> EPA has proposed off-site disposal for the anticipated 4.3 million cubic yards of contaminated soil and sediment at the Passaic River Diamond Alkali Site after the public and state of New Jersey expressed opposition to on-site confined aquatic disposal.<sup>203</sup> And at the Lower Fox River site, more than 3.6 million cubic yards of dredged sediments were disposed at off-site licensed and regulated landfills.<sup>204</sup> Taken together, the volume of sediments disposed off-site at these three sites alone exceed the volume of sediments disposed on-site at other sites around the country.<sup>205</sup>

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<sup>199</sup> US EPA, Record of Decision Amendment, New Bedford Harbor Site, Hotspot OU, at 4-7, Apr. 27, 1999.

<sup>200</sup> Troy W. Hartley, How Citizens Learn and Use Scientific and Technical Information in Environmental Decision Making, 10 J. of Higher Ed. Outreach and Engagement, 153, 159-161 (2005).

<sup>201</sup> US EPA, Record of Decision Amendment, New Bedford Harbor Site, Hotspot OU, Apr. 27, 1999.

<sup>202</sup> Telephone Interview with Michael Cheplowitz, EPA Remedial Project Manager (August 2015); EPA First Five Year Review for Hudson River PCBs Superfund Site, June 1, 2012.

<sup>203</sup> Telephone Interviews with Alice Yeh, EPA Remedial Project Manager (August 2015 and January 2016); EPA Proposed Plan for Lower Eight Miles of the Lower Passaic River, Part of the Diamond Alkali Superfund Site, April 2014; Letter from Bob Martin, Commissioner of New Jersey Department of Environmental Protection, to Amy Legare, National Remedy Review Board Chair, Dec. 6, 2012.

<sup>204</sup> Telephone Interview with Jim Hahnenberg, EPA Remedial Project Manager (August 2015); Telephone Interview with Susan Pastor, EPA Community Involvement Coordinator (January 2016); Five Year Review Report for Fox River NRDA/PCB Releases Superfund Site, July 17, 2014.

<sup>205</sup> Based on the volume of on-site sediment disposal identified in Exhibit A to GE's Statement of Position.